

1 HONORABLE RONALD B. LEIGHTON

2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ESTATES OF CHARLES C. HASELWOOD
and JOANNE L. HASELWOOD,

10 Plaintiffs,

No. 10-5464-RBL

11 v.

12 CHICAGO TITLE INSURANCE COMPANY,
13 Defendant.
14

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS [Dkt. #15]

15 THIS MATTER comes before the Court on Defendant Chicago Title Insurance
16 Company's Motion to Dismiss [Dkt. #15] under Fed. R. Civ. P. 12(b)(6). Defendant argues that
17 Plaintiffs' insurance coverage claims are barred by a statute of limitations.
18

19 **I. FACTS**

20 Joanne and Charles Haselwood (together "Haselwood") loaned money to Bremerton Ice
21 Arena, Inc., in 2002 to construct an ice area. The loan was secured by a deed of trust.
22 Haselwood also purchased a title insurance policy from Chicago Title Insurance Company
23 (CTIC) to finance the loan.
24

25 In 2003, Bremerton Ice Arena stopped making payments to its lenders. On July 16, 2003,
26 RV Associates, Inc., a contractor on the project, filed a lien for materials and services against the
27 arena property. On November 6, 2003, Haselwood filed a suit against Bremerton Ice Arena, RV
28

1 Associates, and other parties, to foreclose its deed of trust. On February 3, 2004, RV Associates
2 asserted a counterclaim that its lien had priority over Haselwood's deed of trust.

3 On April 24, 2007, Haselwood sent a letter to CTIC regarding the foreclosure action.
4 According to Haselwood, CITC did not acknowledge receipt of Haselwood's claim until May 9,
5 2007. On November 5, 2009, CTIC sent Haselwood a letter denying that it had a duty to defend
6 or indemnify Haselwood.
7

8 On June 21, 2010, Haselwood sued CTIC, alleging that CTIC had wrongfully denied
9 them coverage. CTIC moves to dismiss the action, arguing that Haselwood's claims are time-
10 barred. [Dkt. #15]. CTIC argues that Haselwood's claims accrued when Haselwood became
11 aware of RV Associate's counterclaim in 2003, and are therefore barred by the six-year
12 limitations period for contract actions, which expired in 2009. It also argues that the three-year
13 limitations period for tort actions expired in 2006. Haselwood contends that his claim did not
14 accrue until 2009, when CTIC denied coverage. He argues that the contract and tort statutes of
15 limitations have therefore not yet expired.
16

17 At issue is when Haselwood's insurance claim accrued.
18

19 II. STANDARD OF REVIEW

20 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
21 theory or absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
22 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege
23 facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S.Ct. 1937,
24 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual
25 content that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged." *Id.* Although the Court must accept as true the Complaint's well-pled
27
28

1 facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise
2 proper [Rule 12(b)(6)] motion. *Vasquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007);
3 *Spewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation
4 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,
5 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations
6 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
7 550 U.S. 544, 555 (2007) (citations and footnote omitted). This requires a plaintiff to plead
8 “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S. Ct. at
9 1949 (citing *Twombly*).

11 III. DISCUSSION

12
13 CTIC argues that Haselwood’s claim accrued in 2003 when Haselwood was notified of
14 RV Associates’s counterclaim in the foreclosure action. Haselwood argues that the claim
15 accrued in 2009 when CTIC denied coverage.

16
17 An insurance claim does not accrue until the insurer actually breaches the insurance
18 policy. *See Schwindt v. Commonwealth Ins. Co.*, 140 Wash. 2d 348, 349, 997 P.2d 353 (2000);
19 *Safeco Ins. Co. v. Barcom*, 112 Wn.2d 575, 583, 773 P.2d 56 (1989); *Bush v. Safeco Ins. Co.*, 23
20 Wn. App. 327, 596, P.2d 1357 (1979). Therefore, accepting all factual allegations asserted in the
21 Complaint as true, Haselwood’s claim accrued in 2009. Because Haselwood brought this action
22 against CTIC in 2010, the claim was timely filed.

23
24 CTIC relies on *Schwindt* for the proposition that a contract action accrues “when a party
25 has a right to apply to court for relief.” *Schwindt*, 140 Wn.2d at 356. But CTIC misapplies that
26 language to this case; Haselwood could not seek relief for insurance denial before he was
27 actually denied insurance.
28

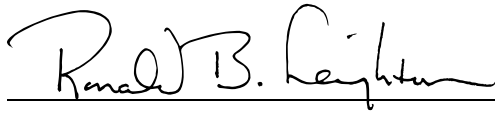
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

Because Haselwood's claim accrued in 2009, neither the three-year tort action nor the six-year contract action statutes of limitations have expired. CTIC's Motion to Dismiss [Dkt. #15] pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED.

IT IS SO ORDERED.

Dated this 18th day of July, 2011.

A handwritten signature in black ink, reading "Ronald B. Leighton", written over a horizontal line.

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE